

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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LEOCADIO GARCIA and GUSTAVO  
ESPINOSA,

Plaintiff,

v.

ITALIAN PAVILION PIZZERIA &  
RESTAURANT, INC., et al.,

Defendants.

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**ORDER**

23-cv-03790 (PMH)

PHILIP M. HALPERN, United States District Judge:

The Court held a pre-motion conference on June 27, 2023. Counsel for all parties appeared by telephone. As discussed on the record, the Court heard argument on Defendants' contemplated motion to dismiss Plaintiffs' Complaint in its entirety, pursuant to Federal Rules of Civil Procedure 12(b)(1)-(6).

The Court construed Defendants' pre-motion letter (Docs. 5-6) as their motion to dismiss and Plaintiffs' response letter (Doc. 11) as their opposition, and considering the parties' arguments thereto, dismissed the motion for the reasons stated on the record. (*See Transcript*); *See In re Best Payphones, Inc.*, 450 F. App'x 8, 15 (2d Cir. 2011) (finding the Court did not abuse its discretion in construing the parties' letter-motions as the motions themselves, and ruling on them). Specifically, the Court found that the applicable statute of limitations may limit recovery but does not bar Plaintiffs' claims. Additionally, Defendants' alleged failure to provide wage notices is properly asserted as a statutory claim and does not require Article III standing. Lastly, the Court found the allegations concerning Plaintiffs as employees plausible and sufficient to withstand a motion to dismiss. Accordingly, Defendants' motion to dismiss is denied.

As stated on the record, Plaintiffs shall prepare and file their contemplated Order and Stipulation amending the case caption to reflect “Ferid Adrovic a/k/a Franco Adrovic” as a defendant and removing “Franco Adrovic” as a defendant.

Plaintiff is directed to serve all Defendants by July 11, 2023. Defendants shall file their Answer to Plaintiffs’ Complaint within two weeks of the date that service on all Defendants is completed. An initial pretrial conference will be scheduled thereafter.

**SO ORDERED:**

Dated: White Plains, New York  
June 27, 2023



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PHILIP M. HALPERN  
United States District Judge